

# **MEDIATION INTAKE PACKET**

## **CUSTODY AND VISITATION**

### **WHAT DO I HAVE TO DO TO SCHEDULE A MEDIATION APPOINTMENT?**

- 1.** If you were referred to mediation in Court, you were instructed to proceed directly to the Family Court Services Department. The Family Court Services Department is located at 145 South Lassen Street. (Across the street from the courthouse at the Access to Justice Center.)
- 2.** When you arrive at the Family Court Services Office, you will be given this intake packet that must be read, initialed, filled out completely and submitted prior to your mediation appointment. In addition, you will be required to watch an orientation video prior to your appointment. It is very important that you read the packet carefully and present any questions you may have to Family Court Staff.
- 3.** As soon as you complete your packet and questionnaire, turn it in at the front counter and your appointment will be scheduled. If you were referred to mediation from court, we will do our best to schedule your mediation prior to returning to court at 4:00 p.m. After completing and submitting the mediation questionnaire, please read the custody and visitation packet.

**DO NOT LEAVE THE FAMILY COURT SERVICES OFFICE UNTIL YOU KNOW  
THE TIME OF YOUR MEDIATION APPOINTMENT AND HAVE TURNED IN ALL  
OF THE REQUIRED PAPERWORK.**

\_\_\_\_\_ I have read and understand the information contained in this packet. (Please initial.)

# MEDIATION RULES

1. EACH PARENT IS TREATED WITH RESPECT AND HAS AN EQUAL CHANCE TO EXPLAIN HIS OR HER VIEWPOINT AND CONCERNS.
2. EACH PARENT LISTENS TO THE OTHER WITHOUT INTERRUPTING AND DOES THEIR BEST TO FIND REALISTIC SOLUTIONS.
3. HITTING, PUSHING, SHOIVING, NAME-CALLING, AND THREATS OF ANY TYPE ARE NOT ALLOWED. MEDIATION IS TO BE A SAFE PLACE FOR BOTH PARENTS.

It is the Mediator's responsibility to see that these rules are followed, to maintain a safe environment, educate parents when necessary and to keep the focus on the best interest of the child.

Each parent is asked to remember the following throughout the mediation process:

- Your child(ren) has the right and the desire to have a relationship with both parents.
- Keep your focus on what your child(ren) needs for his/her healthy development now and in the future.
- Divorce is difficult for all children; however, the child's pain and suffering will be decreased when the parents are able to cooperate and work together to develop a parenting plan that is based on the child(ren)'s needs. The basic needs of children are to be loved and cared for; to develop a sense of trust – which will be significantly impacted by how the parents get along; and other basic needs such as protection, food, water, shelter, adequate rest, exercise and health care.
- You, as parents, may not be getting along and may want to change your relationship; however, it is in your child(ren)'s best interest to continue to get along with both parents and not become a part of, or exposed to, the parent's differences.

## Explanation of MEDIATION WITH CHILDREN

A referral to mediation is required by California State law when parents are unable to reach agreement as to custody and/or visitation. This handout helps parents understand the process of mediation. Please read it carefully before your mediation session.

- **WHAT IS MEDIATION?** Mediation is the process of assisting parents reach agreement on custody and other disputed matters. The mediator has both educational and practical experience involving children and families and dispute resolution. The mediator has no authority to create or change court orders, nor can the mediator assist you in enforcement of a court order.

The key issue for the mediator and the court is to determine the best interests of the child(ren) now and in the future. While there are many conflicting theories and opinions about what is the best parenting arrangement for children after parental separation, research strongly suggests that when parents are in serious conflict, no custody plan works well for the child. However, when the parents are courteous, civil, and supportive to each other, any custody division works well. Thus, the exact schedule of shared parenting and custody is far less important than your ability to interact respectfully and cooperatively. If you truly have the best interests of your child(ren) at heart, you will do your best to keep your relationship and communication with the other parent as gracious and supportive as possible.

Mediation is time limited, so please be prepared to be flexible and open to multiple options.

- **ORIENTATION SESSIONS:** Orientation sessions are held immediately following the 8:00 AM court calendar for parties' court ordered to mediation. If you feel that you would be in danger attending the orientation session with the other parent, please let the Family Court Services staff know so that we can take any measures necessary for your protection. Orientation sessions are required to provide parents with information regarding the mediation session. The orientation session consists of a video regarding the mediation session and the effects of parental separation on children. There is usually a representative on hand to answer any questions that might arise.
- **WILL I BE SAFE DURING MEDIATION SESSIONS?** Part of the mediator's job is to maintain a sense of safety throughout the session. If you are concerned about your safety, please discuss the issue with office staff and the mediator beforehand and be sure to read the information on domestic violence. Meetings

take place in an ordinary office setting. If you are concerned about your safety, there are several things that can be done. At your request, we can arrange to have an office employee meet you as you drive up, escort you into the office, stay with you throughout the meeting, and/or escort you to your car. You will need to let the office know the degree of safety measures you feel are reasonable to protect you.

- **MEETING JOINTLY VERSUS INDIVIDUALLY.** In most cases you are required to meet jointly in mediation. The law allows you to have individual sessions where there has been a history of domestic violence between the parties or where restraining orders are in effect, but successful mediation is usually the result of both parties meeting together. If you are more than a little fearful, you may have a support person present. Joint sessions are encouraged unless a restraining order is in place and/or there is a history of domestic violence.
- **DO I HAVE TO PARTICIPATE IN MEDIATION?** If you have been referred to mediation by the court, this is a court order and you may be held in default for failure to participate in mediation. If you do not want to participate in mediation, you should request that the court make an order that you not be required to do so. If you have a previous court order arrived at through mediation, that order may require you to participate in mediation at the request of the other party. If there is no court order, you are not required to participate in mediation. However, if the other party files a motion with the court requesting orders regarding custody or visitation and you are in disagreement, the court is mandated to refer you to mediation. Attending mediation voluntarily may result in an agreement that makes a court process unnecessary.
- **HOW ARE APPOINTMENTS MADE FOR MEDIATION?** Appointments will be scheduled immediately following the completion of the mediation intake packet and orientation. An attempt will be made to see everyone prior to their scheduled court date. Fast Track Mediation is when parents are referred to mediation on the day of court and required to return to court at 4:00 p.m. the same day. If it is not possible to schedule your mediation prior to your court date, an appointment will be made for a later date and the court will be advised to continue the court date until after that appointment. Please do not leave until you have been told the date and time of your appointment.
- **HOW LONG IS MEDIATION?** There is no set minimum or maximum time limit or number of sessions. Most mediations will conclude in one or two one-hour sessions. But there are times when parents want to try out a custody schedule before finalizing an agreement. In those instances, an interim agreement may be put in place and the parents may return in six to twelve months for review.
- **CAN I CANCEL THE SESSION?** You may cancel and reschedule the session, but only because of a legitimate need. Mediation appearances must be kept in

the same way that you are required to keep court appearances.

- **WHAT IS THE COST OF MEDIATION?** There are no fees for mediation.
- **WHAT DO ATTORNEYS DO IN THE MEDIATION PROCESS?** Attorneys are not required for the mediation or evaluation. Since the process is civil (not criminal), attorneys are not provided to parents by the court. Consequently whether or not to hire an attorney is a matter of individual parent choice. However, attorneys are a valuable source of information and assistance in the custody process and in the enforcement of court orders. If you do have an attorney, any agreement reached in mediation may be reviewed by the attorney prior to finalizing the agreement.
- **WHAT IS EX PARTE COMMUNICATION?** Ex parte communication between any single party or attorney and the mediators are prohibited, unless (a) authorized by the court, (b) to schedule appointments, (c) address a case involving allegations of domestic violence, (d) carry out the responsibilities they may have as mandated reporters or to warn, and/or (e) allow mediators to investigate or disclose an actual or potential conflict of interest or dual relationship. Nothing in this rule shall prohibit the mediator from contacting either party or attorney. All information provided to the mediator by one party must also be provided to the other party excluding the Mediation Intake Packet. The Mediation department has a Mediation Proof of Service form for this purpose.
- **DOES THE MEDIATOR MAKE RECOMMENDATIONS TO THE JUDGE?** Ordinarily, the mediator will make recommendations at least as to temporary orders if mediation does not result in an agreement. When mediation does not end in an agreement, the mediator's role is to assist the judge, not to become the judge. Parents have the right to contest a mediator's recommendation in court and tell their side of the story. At times, the mediator may appear unsympathetic to parents. At those times, parents need to recognize that the mediator is more interested in the welfare of the child than in the discomfort, disappointment, or welfare of the parents.
- **HOW CONFIDENTIAL IS MEDIATION?** Ordinarily, mediation is confidential except as to the parties and their attorneys. If mediation does not result in an agreement and the mediator makes a recommendation to the court, information obtained in mediation that is relevant to the recommendation may be provided to the court. The mediator may also inform the court of allegations of a serious nature that were made and that the allegations warrant further examination. If serious allegations of child abuse or neglect are raised, the mediator is required by law to report the claims of abuse to proper authorities.
- **WHAT WILL THE MEDIATOR WANT TO KNOW?** The mediator helps parents

make good decisions which will be in the child's best interest. Therefore, the primary focus will be on defining and negotiating conditions which both sides find (minimally) acceptable. In the beginning, the mediator will want to know what each parent's preference is for custody. Areas of agreement and differences are identified. Then the process of examining, negotiating, and compromising begins. If there are legitimate reasons why one or both parents are unfit to raise or have contact with the child, the mediator will want to know the details. Generally the mediator is not interested in reasons for the divorce or the many grievances between parents. Letters of reference, police reports, school records, visitation records, medical records or other important information should be submitted prior to the mediation session, with a copy being provided to the other party.

- **IS THERE A PREFERENCE GIVEN TO MOTHERS OR FATHERS?** Current law does not give preference to either mothers or fathers. The law views the parties as parents, regardless of sex. It is important for both parents to realize that their sex will not be taken into consideration regarding custody. Such statements as, "but, I am his mother," "She's too young to be away from her mother," or "A boy needs his father" will be ignored by the mediator and the court. The mediator substitutes the word "parent" whenever the words "mother" or "father" are heard. What is important is the ability of a parent to meet the child's needs and that both parents have the opportunity for contact and ongoing interaction with the child.
- **DO CHILDREN HAVE A SAY?** The law says, "If a child is of sufficient age and capacity to reason so as to form an intelligent preference as to custody, the court shall consider and give due weight to the wishes of the child..." No age is specified. The court is not required to agree with the child, only to consider the child's wishes. Because the intent of mediation is for parents to reach an agreement, children usually do not take an active role in the process. The mediator may see children at the parent's request if parents want an objective person to evaluate a child and provide feedback to the parents about the child's feelings. The mediator may also request to see a child, if the parents are unable to agree on custody arrangements OR as part of an assessment to be used in making a recommendation to the court.

There are two situations that parents should avoid. First, it is not a good idea to question children about their preference in custody. Children may volunteer information, but pressuring them about who they want to live with is highly stressful. Secondly, leaving decisions regarding how the child's time is shared between parents up to the child is similarly stressful on children. The stress of parental separation or disagreement about custody is difficult enough without adding the burden of being forced to choose between parents. Parents, acting in behalf of their children, bear the difficult burden of custody decisions.

- **SHOULD PARENTS BE TALKING ABOUT COMPROMISES OUTSIDE OF MEDIATION?** It is to the benefit of everyone for parents to reach agreement as quickly as possible. In situations where parents can discuss the issues amiably and reasonably, they should attempt to resolve the situation between themselves. **Although, if a compromise/agreement is made and not made an order of the court, there will not be any enforceability by law enforcement.**
- **WHAT IS LEGAL CUSTODY?** “Legal” custody means that various parental rights are held by both parents no matter how the child’s time is shared with each parent. These rights include access to medical and educational records. Similarly the parents are jointly liable for the minor’s acts and financial support (jointly agreed upon or as determined by the court). Most custody matters are now resolved by awarding joint legal custody. Legal custody may be removed by a judge when a parent is shown to be, for example, seriously abusive to the child or the other parent. It is possible for a parent to have legal custody of his/her child but not be allowed to see them (physical custody).
- **WHAT IS PHYSICAL CUSTODY?** Physical custody refers to physical residence of the child(ren). State law gives custody preference to the parent most willing to allow frequent contact between the child and the other parent. Physical custody is a division of time, ranging from no time with the child to having 100% time with the child. Current social and legal philosophy is to provide the child(ren) with as much access to both parents as possible. There are many ways to divide parental access to children. It is best to avoid thinking of “sole” physical custody, unless you want the other parent to have no contact with the child. Rather, think of how to share time (days and hours).
- **WHAT IS A CHILD CUSTODY EVALUATION?:** A Child Custody Evaluation is an investigation and analysis of the health, safety, welfare and best interest of the child/ren when there are unresolved issues in a case. This Evaluation is an additional cost to the parents and fees are paid to the Office of Recovery and Reimbursement at the Courthouse at 220 South Lassen Street, Susanville, CA 96130.

A copy of the Child Custody Evaluation is provided to the parties and their attorneys. **A Child Custody Evaluation is confidential and monetary sanctions, attorney fees and/or costs may be imposed for the unwarranted disclosure of the report.** For more information regarding a Child Custody Evaluation, please refer to the Judicial Council Form FL-329. You can request a copy from Family Court Services.

## DOMESTIC VIOLENCE

- **NOTICE TO VICTIMS OF DOMESTIC VIOLENCE:** Pursuant to the California Family Code, if there has been a history of domestic violence between the parties or where there is a restraining order in effect, at the request of the party alleging domestic violence or protected by the order, the parties shall meet with the mediator separately and at separate times. If you have been a victim of domestic violence and feel that you would not be able to freely negotiate in a joint session due to threats, intimidation, fear for your personal safety or fear of retaliation, please advise the mediator or staff that you are requesting separate mediation sessions. Mediation sessions take place in an ordinary office setting. If you are concerned about your safety, there are several things that can be done. At your request, we can arrange to have an office employee meet you as you drive up, escort you into the office, stay with you throughout the meeting, and escort you to your car. You will need to let the office know the degree of safety measures you feel are reasonable. We trust that you will communicate your fears to our office staff so that everyone's protection can be assured.
- **DOMESTIC VIOLENCE RESTRAINING ORDERS:** Mediation standards prohibit the negotiation of whether or not a domestic violence restraining order will be made or continued. If you or the other party have requested a domestic violence restraining order and there is disagreement regarding whether there should be a restraining order, that issue will be decided by the court. Mediation is able to resolve your restraining order by a Dismissal of the Restraining Order by the Plaintiff or by a Dismissal of the Restraining Order by the Plaintiff with an Informal Agreement between the parties.. Pursuant to Family Code section 3044, custody and visitation issues cannot be addressed until there is a ruling on the restraining order.
- **SUPPORT PERSONS:** If there has been any form of violence in your relationship, you may be entitled to the presence of a "support person" during mediation sessions. A support person who is to be included in a joint mediation session **MUST BE APPROVED BY THE MEDIATOR**. Family members, new partners, or friends that have taken sides in the conflict between you and the other party are generally not approved as support persons. Counselors or employees of a domestic violence shelter/program will generally be approved as support persons. Attorneys will not be approved as support persons and are excluded from all mediation sessions. If you have questions please talk to the mediation staff.

The mediator may exclude or ask a support person to leave a mediation session, if the support person participates in the mediation session, acts as an advocate, their presence is disruptive and/or the support person is prompting, swaying, or



influencing the mediating party.

- **SAFETY PLANNING.** If you are or have been involved in a relationship where violence has occurred there are many things you need to think about and need to plan for to make yourself safer. The following ideas will help you figure out what you need to do: Think about having important phone numbers available for your children and for yourself. For example: police, hotline, friends, shelter. Think about some friends or neighbors you could tell about the violence and ask them to call the police if they hear suspicious noises coming from your home. Think about at least four places you can go if you leave your home. Think about leaving extra money, car keys, clothes, and copies of important papers with a close friend, relative or neighbor. Think about keeping change for phone calls with you at all times, opening a savings account, rehearsing your escape route with a support person, reviewing your safety plan periodically. Your life and your safety are most important. Bringing your children with you is important. Everything else is secondary. However, think about taking the following items with you when you leave: identification, birth certificates for you and your children, social security cards, school and medical records, money, bankbooks, credit cards, keys, driver's license and registration, medications, change of clothes, welfare identification, passport, green card, work permit, divorce papers, lease/rental agreements, mortgage payment book, current unpaid bills, insurance papers, address book, pictures, jewelry, items of sentimental value, children's favorite toys, blankets, etc., personal protection order.

**WARNING!!** Violence frequently gets worse when you try to leave or show signs of independence, like filing for divorce or a restraining order. Your partner may become desperate. After the relationship is over, take special care. Think about changing the locks, installing steel/metal doors, a security system, smoke detectors and an outside lighting system. Think about telling a couple of neighbors that your partner no longer lives with you and ask them to call the police if s/he is observed near your home or children. Think about telling people who take care of your children the names of those who have permission to pick them up. If you have a personal protection order that names your children, give their caretakers and their schools a copy of the order. Think about telling someone at work about your situation and ask that person to screen your calls. Think about not using the same stores, banks, or other businesses that you used when you lived with your battering partner. Think about getting a personal protection order from the court. Keep a copy with you all the time, give one to the police, to your children's caregivers, to your children's schools, and to your own supervisor at work. Think about someone you can call if you feel down and are thinking about returning to your battering partner. Think about attending workshops and support groups to gain support and strengthen your relationships with other people.

For your safety's sake, ask yourself these questions: Are there weapons in the

house? Where? Can you remove the weapons? The ammunition? Lock them up? Take them to the police? Can you figure out a signal for the neighbors to call the police? Can you teach your children to call the police? Or go to a neighbor's and call? How will you get out of the house? Some people take out the garbage, walk the dog, get the newspaper or offer to go get cigarettes. Set up a routine where it is normal for you to leave for a short time. Many victims of domestic violence ask these questions about leaving.

- **CAN I TAKE MY CHILDREN WITH ME WHEN I LEAVE?** Yes, if you can do it safely, definitely take your children with you. It may be more difficult later. Get legal custody of them within a few days. This is very important. You may contact Lassen Family Services at 530-257-4599 or the Access to Justice Center at 530-251-8353 for assistance. Your partner may try to kidnap, threaten or harm the children in order to get you to return. If you are in immediate danger and cannot take your children, contact the police immediately to arrange for temporary protective custody. (This does not mean you will lose custody. Permanent custody will be decided later by a judge.)
- **WHERE DO I GO?** Stay with a friend or relative. It is better not to stay with a person of the opposite sex unless that person is a relative. Go to a shelter with your children. The staff there can help you get legal and financial help as well as provide counseling and emotional support for you and your children. In an emergency, call 911. For assistance or access to a shelter in the Susanville area call **LASSEN FAMILY SERVICES** at **(530) 257-4599** or the **CRISIS LINE** at **(530) 257-5004**.

## **FREQUENTLY ASKED QUESTIONS FOLLOWING MEDIATION**

- **WHAT HAPPENS IF I CHANGE MY MIND ABOUT THE AGREEMENT?** If the change is minor, it may be best for you to contact the other parent and find out if they are in agreement with the change. If they are, feel free to contact Family Court Services and advise them of the change. If a report has already been submitted to the court, you must let the court know about the change at the hearing. If the change is major, or if the other parent does not agree, it might be necessary to have another meeting. After an agreement is signed or after the court has entered an order, you are not free to change it, unless the other parent is in agreement. When both parents are in agreement, they can change the provisions of custody freely. When parents are not in agreement, you have two choices. First, you can seek mediation directly in the hope of changing the other parent's mind or reaching a compromise. The second alternative is to request a modification of custody orders from the court. Agreements reached through mediation commonly order the parties to seek mediation assistance prior to returning to court. Even if this is not required in the agreement, if you file for a modification the court customarily refers the matter to mediation as part of the process. Therefore, it is a good idea to attempt mediation before beginning the court process. Where you believe immediate action is necessary for the safety of the child, contact the court first.
- **HOW PERMANENT ARE CUSTODY DECISIONS?** The law says that when there is a "substantial change in circumstances", the case may be re-examined at the request of either party. The judge decides if a substantial change exists. Situations such as moving your residence, remarriage, incidents of neglect, cohabitation, or changes in employment status are usually viewed as being substantial changes. A change of circumstance is also possible when the child's behavior, school performance, or psychological adjustment has worsened. The court has usually been lenient in permitting a reexamination of custody. At that time, one part of or the entire custody arrangement can be renegotiated. Changes are made in the best interests of the child, regardless of what the past custody order was.
- **HOW DO I MODIFY AN ORDER THROUGH COURT?** If you want orders changed and you and the other party have not been able to reach an agreement through mediation, you or your attorney will need to file an "Order to Show Cause for Modification" or a "Notice of Motion for Modification" with the court, asking for a change in the parenting schedule. You should file such an action with the court before going through further mediation where there is an immediate threat to the safety or well being of the child(ren). Blank forms are available on the Internet at [www.courtinfo.ca.gov](http://www.courtinfo.ca.gov). You may also contact the

**ACCESS TO JUSTICE CENTER in Susanville at 530-251-8353** for assistance.

➤ **WHAT HAPPENS WHEN THE OTHER SIDE VIOLATES THE COURT ORDER?**

Mediation is not the place to enforce a court order. If the other parent violates the order you may attempt to have him/her comply voluntarily or can bring the matter to the attention of the court. The court has the power to hold a party in contempt for violating court orders and can impose fines and/or incarceration. This is generally effective in persuading parties to follow the court's orders. To have the other party held in contempt, you or your attorney will need to file an "Order to Show Cause Re Contempt". Blank forms are available on the Internet at [www.courtinfo.ca.gov](http://www.courtinfo.ca.gov). You may also contact the **ACCESS TO JUSTICE CENTER at 530-251-8353** for assistance in filing the forms.

➤ **HOW DO I OBTAIN A RESTRAINING ORDER?** Restraining orders ordinarily do not prevent the other parent from contacting you regarding visitation or custody arrangements (but can, if specified). To obtain a restraining order you or your attorney will need to file the documents for a Domestic Violence Restraining Order with temporary orders. In emergency situations you may be able to obtain an "Emergency Protective Order" from the police.

The following people can or may be able to assist you in obtaining a restraining order: attorneys, paralegals, domestic violence shelters, and crisis centers.

**Local agencies include Lassen Family Services at 530-257-4599, the Crisis Line at 530-257-5004 and Access to Justice Center at 530-251-8353.**

## MEDIATION COMPLAINTS

- **WHAT DO I DO IF I HAVE COMPLAINTS ABOUT THE MEDIATION PROCESS?** Responsibility for making official orders about your parenting arrangements rests with the court. No one but a judge can order any child custody or visitation arrangement. Family Court Services/Mediation staff may or may not advise the court regarding what they think would be best for your children. The judge of your court is the only person authorized to order a child custody or visitation arrangement.

Family Court Services/Mediation cannot reverse or change a court-ordered parenting plan. Only a judge can change the court order. If you are concerned about the custody or visitation orders that were made by a judge, you must make your appeal directly to the court for a review of the case. Your attorney, filing clerk or the Access to Justice Center can tell you how to appeal a court decision.

A complaint about how you were treated in Mediation or about the procedures used can be addressed directly by the Family Court Services/Mediation office. Client Complaint Forms are available at Family Court Services. Submitting a complaint by using the Client Complaint Form is not an appeal for a review of reversal of court orders that have been made in your case. An appeal is a legal process over which Family Court Services/Mediation has no control.

We at Family Court Services appreciate you taking time to inform us of your complaint about the services you received through our offices. We encourage you to notify us of your complaint as early as possible. Court staff is committed to responding to your concerns in a prompt and thorough manner. We are interested only in helping you and the courts make the best decisions possible to meet the needs and interests of your children.

We encourage all clients with complaints about their experience with Family Court Services to first talk directly with the individuals involved in order to try and work things out. Many complaints about mediation and evaluation services are a result of misunderstandings or miscommunication. Many misunderstandings can be worked out through direct, honest discussion.

If you have complaints regarding a Family Court Services staff member or mediation procedures, please contact the Court Services Manager at the Family Court Services Department at 530-251-8353.

